

REPORT & RECOMMENDATIONS

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Senior Vice President Felicia Washington
USC Human Resources/Employee Relations Steering Committee

FROM: Joint Committee to Review Processes and Practices: OCAP
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I. INTRODUCTION

On February 18, 2020, Provost Charles F. Zukoski and Senior Vice President for Human Resources Felicia A. Washington joined with the Academic Senate and the Staff Assembly to announce the formation of a Joint Committee to Review Processes and Practices: OCAP (“the Committee”). The Committee was created to review and make recommendations regarding the investigatory processes and practices of the Office of Conduct, Accountability, and Professionalism (OCAP). The Committee was asked to get input from faculty and staff related to OCAP and its interplay with employee relations, as part of a broader initiative called USC HR: Designing for the Future. The charge to the Committee was threefold:

- (1) Examine the current processes by which OCAP investigates complaints and makes findings;
- (2) Review statistics regarding complaints and resulting outcomes (without revisiting the findings of past investigations or having any role in conducting investigations); and
- (3) Make recommendations for enhancements to OCAP's processes and provide those recommendations to the USC Human Resources/Employee Relations Steering Committee by the end of the semester.

The Committee has examined the current processes of OCAP and reviewed statistics regarding the complaints it investigates and its outcomes, and is making the recommendations listed in Section III below. The Committee believes the recommended changes will improve the effectiveness and fairness of future investigations of misconduct committed by USC employees that violates USC policy but does not fall within the purview of USC's other investigative offices, such as the Title IX Office, the Office of Equity and Diversity, or the Office of Compliance.

Before describing its recommendations in detail, the Committee wants to recognize that the University is in the process of undertaking a broader reform of its Human Resources operations, which is known as the "USC HR: Designing for the Future" initiative. One goal of that initiative is to reduce the need for OCAP-style investigations by putting in place measures (e.g. leadership training and more informal procedures) to prevent repeated employee misconduct at a much earlier stage. The Committee hopes that, over time, the need for OCAP-style investigations will be reduced or even eliminated by the use of other, more proactive measures that involve early intervention to correct deficient performance and prevent misconduct from occurring, thereby creating a healthier, high functioning workplace. However, the Committee also believes that it will take time to resolve all of the complex employee misconduct issues that currently exist at USC. The Committee's recommendations below are intended to address these legacy issues.

II. BACKGROUND DATA

A. OCAP's Current Processes

The first task of the Joint Committee was to examine OCAP's current processes. OCAP was created in 2018 to capture all non-protected-status concerns¹ and complaints that trigger university policy implications. Unfortunately, many, if not most, faculty and staff did not have a clear understanding of OCAP's role, processes, or practices. As a result, one of the reasons this Committee was formed was to

¹ Federal and state law protect individuals from discrimination or harassment based on protected classes, including sex, race, age, disability, color, creed, national origin, religion, or genetic information. The term "non-protected-status" concerns is used to refer to allegations that do not involve misconduct targeted at a person because of their status as a member of a protected class.

address concerns that were raised by faculty and staff about OCAP—in particular that its processes were not clear and were possibly unfair, undermining confidence in the fairness of its outcomes.

OCAP's current processes were explained to the Committee by two of our members—Gretchen Gaspari, the Executive Director, Equity and Diversity and Title IX, Office of Equity and Diversity, and Mark Manley, Director of Professionalism and Ethics. To help the Committee understand OCAP's operations, they provided us with documents, including a copy of OCAP's investigative guidelines and a variety of templates for the letters OCAP uses to request to interview reporting parties, witnesses, and respondents; letters OCAP uses to notify respondents and the respondents' supervisors about the existence of the investigation; an outline of the investigative report's sections; letters used to notify respondents, reporting parties, and witnesses of the investigation's results; and letters used to notify respondents of their right to appeal.² The Committee also interviewed three of the six current OCAP investigators.

Basically, OCAP conducts workplace investigations, makes findings of fact, and determines if university policy was violated. OCAP does not issue sanctions or discipline with respect to its findings, as that responsibility currently rests with Human Resources (for staff) and the Committee on Professional Responsibility (for faculty).

To help faculty and staff understand OCAP's current processes, the Committee prepared a three-page Information Sheet summarizing OCAP's current operations. A copy of that Information Sheet is attached to this report as Exhibit A.

B. Statistical Information

The Committee reviewed statistical information about OCAP's investigations over the last two years. The following charts show that statistical information.

² The term "reporting party" refers to any person who has allegedly been directly affected, impacted, or harmed by the alleged misconduct. The reporting party may not be the person who originally contacted OCAP to report the conduct in question. The term "respondent" refers to the person who allegedly committed the involved conduct. The term "finding" refers to a fact-based finding that one or more violations of policy occurred. The term "rerouted" refers to cases that were not investigated by OCAP and instead sent to Human Resources, Faculty Affairs, or another investigative unit to be handled.

2018 Cases with Faculty Reporting Parties

Reporting Parties	21
Finding	4
No Finding	0
No Investigation after inquiry, no response to outreach	8
Rerouted	9

2018 Cases Faculty Respondents

Respondents	42
Finding	6
No Finding	3
No Investigation after inquiry, no response to outreach	16
Rerouted	17

2018 Cases with Staff Reporting Parties

Reporting Parties	53
Finding	13
No Finding	8
No Investigation after inquiry, no response to outreach	13
Rerouted	19

2018 Cases with Staff Respondents

Respondents	51
Finding	13
No Finding	7
No Investigation after inquiry, no response to outreach	14
Rerouted	17

2019 Cases with Staff Reporting Parties

Reporting Parties	51
Finding	13
No Finding	9
No Investigation after inquiry, no response to outreach	14
Open	4
Rerouted	11

2019 Cases with Staff Respondents

Respondents	48
Finding	16
No Finding	8
No Investigation after inquiry, no response to outreach	13
Open	4
Rerouted	7

2019 Cases with Faculty Reporting Parties

Reporting Parties	16
Finding	3
No Finding	0
No Investigation after inquiry, no response to outreach	6
Open	1
Rerouted	6

2019 Cases Faculty Respondents

Respondents	41
Finding	4
No Finding	4
No Investigation after inquiry, no response to outreach	18
Open	5
Rerouted	10

III. RECOMMENDATIONS

A. Guiding Principles

The Committee firmly believes that to be fair, thorough, and effective, all investigations of employee misconduct that violates one or more university policies must be guided by certain key principles, including the following:

1. The investigative unit must have clear, publicly disclosed processes and practices, developed in coordination with faculty and staff representatives selected by their respective governing bodies.
2. Investigations must be conducted in a way that is fair, timely, and consistent, regardless of the parties' identities or status.
3. Investigations must be conducted in a way that carefully balances the privacy rights of everyone involved.³ More specifically, in its recommendations, the Committee has tried to balance the need to protect people's personal privacy with (a) the right of reporting parties and witnesses to have all allegations thoroughly investigated, to be protected from retaliation, and to seek the advice of others about their situations, and (b) the right of respondents to understand the nature of the allegations against them, to seek the advice of an advisor, and to not have their reputations unfairly damaged by the release of unsubstantiated allegations.
4. There should be ongoing, clear communication with the USC community about OCAP's policies and outcomes.

In keeping with these guiding principles, the Committee developed a number of specific recommendations, which are listed below.

B. Recommendations

³ In this report, the Committee recognizes the difference between privacy rights and confidentiality. As used in this report, information is kept "confidential" if it is not shared with anyone else (e.g., counselors and doctors have a legal right and duty not to disclose patients' medical information). However, information is kept "private" as long as it is not publicly disclosed and is shared only with others who have a "need to know." Currently, OCAP promises to keep information learned as part of an investigation as private as possible, meaning it will only be shared with those who have a need to know the information in order to perform their duties (e.g., supervisors are notified of the allegations). However, it cannot promise to keep all information completely confidential because of the concerns articulated in Section A.3.

1. USC continues to need a formal unit to investigate allegations of egregious or unusually complex misconduct by its employees

The Committee first examined the question whether OCAP should be eliminated, meaning that the cases it previously investigated would be handled by the normal employee relations process, rather than by a more formal investigative office. The Committee concluded that the university should continue to have a formal investigative office to address its most serious allegations of non-protected-class employee misconduct as long as certain steps are taken to ensure that the office's investigative processes are fair, timely and transparent. This recommendation takes into account USC's recent history of scandals, the recommendations of the 2017-2018 Task Force on Workplace Standards and Employee Wellness, our examination of OCAP's current processes and statistics, and our recommendations how those processes could be improved.

Before OCAP's creation, the university had a history of failing to thoroughly and fairly investigate misconduct by senior-level faculty and staff, and failing to openly and transparently investigate misconduct that might put the university in an unfavorable light. The reasons for that failure are not entirely clear, but most USC employees agree that the failure existed.

In early 2017, the Task Force on Workplace Standards and Employee Wellness was established in response to some of these scandals to "examine our policies, procedures, and practices so that we understand what we could have done better and make improvements to do just that." The Task Force produced an Interim report in January 2018, recommending, among other things, that the university "develop a coherent system for receiving and handling all types of concerns about members of the USC community, based on a trusted one-stop shop for receiving concerns, an adaptation of the Vanderbilt Co-worker Observation Reporting System (CORS) or its equivalent for handling concerns, and improved feedback on the results."

In October 2017, OCAP was announced and tasked with "investigating concerns about workplace misconduct, including violence in the workplace, that fall outside the strict purview of existing investigative offices." The Committee believes that continuing to have a formal investigative office to investigate these types of concerns is justified and appropriate, as long as steps are taken to ensure that its processes are fair, timely and transparent. Accordingly, the Committee recommends that the University have a formal investigative unit that investigates the cases described in section 2 and uses the processes detailed below.

2. Clear, written objective guidelines that define the types of misconduct that OCAP investigates must be developed and publicly disclosed.

Current Practice:

Currently OCAP has no publicly written objective guidelines that define the types of misconduct that OCAP investigates, nor are there any guidelines about what parties can expect during an investigation.

Recommendations:

The Committee recommends that the university publish written objective guidelines to govern the type of cases that should be referred to OCAP (or its successor office) for investigations. Those guidelines should require the following.

The alleged misconduct must:

a. violate at least one university policy;

and

b. fall within one or more of the following categories:

(i) Verbal or nonverbal conduct that harmed, threatened to harm, or would intimidate a reasonable person. Examples include but are not limited to:

- Physically threatening language directed at anyone while on campus, including any faculty, staff or student
- Any physical conduct that uses or threatens the use of violence
- Threats of non-violent retaliation or retribution that would affect the person's job status, position at the university, or other similar threats

(ii) Repeated, persistent, disruptive behavior that amounted to bullying or harassment.

Examples include, but are not limited to:

- Belittling or berating statements
- Name calling
- Use of profanity or disrespectful language
- Inappropriate comments
- Blatant failure to respond to the needs of fellow employees
- Personal sarcasm or cynicism
- Lack of cooperation without good cause
- Condescending, degrading or demeaning comments to or about other people

(iii) Repeated, persistent misconduct that the perpetrator failed to correct after having been asked to do so by a supervisor, ER professional, university counselor, or other university official;

(iv) Misconduct committed by a university employee who holds a supervisory position that is sufficiently high ranking that it would be difficult for a standard ER investigation to be conducted. Examples include but are not limited to:

- Deans and Vice Deans
- Members of the Provost's Office
- Members of the President's Office
- Senior Vice Presidents and Vice Presidents

- Executive Directors, Directors of administrative units, centers and university-wide organized research units

(v) Misconduct that necessitates an unusually complex investigation because it involves numerous witnesses, multiple and different kinds of allegations, allegations that span an extended time frame, parallel administrative or legal investigations, or complicated technological issues (e.g., the misuse of university resources and systems). Examples include but are not limited to:

- The reporting party and respondent are from different schools or units of the university, or one party comes from outside the university;
- The alleged conduct occurred off campus but within the definition of the academic mission or workplace;
- The alleged conduct requires a significant amount of technological assistance to assess (e.g. the conduct involved the use of multiple different computers, or online systems/platforms);
- The alleged conduct is contemporaneously being reviewed by medical staff, law enforcement, or another administrative entity (like an institution or state or federal agency).

3. Presumptive timelines should be developed to help ensure that all cases are investigated and resolved in a prompt manner:

Current Practice:

Currently, on a practical level, OCAP investigations usually occur consistent with the timeline recommended below, but this timeline has never been formally documented or adopted. There is a documented timeline⁴ that governs staff complaints that are handled under the human resources/employee-relations process (i.e. that are not referred to one of USC’s formal investigative units), but there is no corresponding timeline for faculty complaints.

Recommendations:

The Committee believes that reasonable presumptive time limits should be established for the completion of each stage of the investigative process. These time limits should be “presumptive” meaning that every reasonable effort should be made to act within the set time frame, but the Committee also recognizes that some investigations will take longer. Accordingly, in exceptional circumstances (e.g., unusually complex investigations), the assigned OCAP investigator should be able to seek permission from a supervisor (i.e. at a level equivalent to the current Office of Professionalism and Ethics) to exceed the set time limit. Those requests should be in writing and notice of the time extension should be provided to the respondent if it occurs at a stage after the respondent has been notified of the existence of the investigation. This recommended timeline generally conforms to the timeline

⁴<https://policy.usc.edu/staff-complaint-procedures/>

currently used for both staff and faculty in OCAP investigations, but certain changes to the traditional timeline are noted.

Initial Handling of the Complaint

- a. OCAP will send outreach to the reporting parties **within 48 business hours** of receiving the complaint. Because complaints may be originally received by another office (e.g., OPE, HR, or Faculty Affairs), the 48-hour requirement will not start until OCAP receives the complaint. The Committee recognizes that for anonymous complaints, outreach will often not be possible.
- b. OCAP will **ask the reporting party to sit for an interview within two weeks** from the date of the outreach, and ask the reporting party to respond to that request within 48 business hours. If the reporting party responds to the request for an interview, that interview should be scheduled within two weeks, but a reasonable effort should be made to accommodate the reporting party if more time is needed. If the reporting party does not respond to initial outreach, OCAP will make a reasonable effort to reach that person. If the reporting party fails to respond, OCAP should assess whether investigative action can or should be taken without the reporting party. If OCAP cannot take investigative action without a participating reporting party, the matter will be closed until, and unless, additional evidence comes to light.
- c. After the reporting party has been interviewed, OCAP should generally make a **decision within two weeks of the interview** whether it is appropriate to: (a) open an investigation; (b) refer the matter to a different office for investigation; or (c) close the matter. Within a week after that decision is made, OCAP will notify the reporting party in writing of the course of action moving forward.
- d. If a decision is made to open an investigation, OCAP will **notify the respondent and respondent's supervisor in writing of the nature of the investigation as soon as the scope of the investigation is determined or within 60 days, whichever occurs first**. OCAP will determine the scope of the allegations as quickly as reasonably possible. If the full scope of the investigation is not known when the first notification takes place, the notification should state that the full scope is not yet known and that the respondent will be notified again as soon as the full scope is determined. **These notifications will specify the university's policy against workplace retaliation**. The same notification process should be followed for all respondents, regardless of rank or position.

Investigation and fact-finding

- e. **OCAP will make every reasonable effort to complete a thorough investigation of a complaint and to determine if one or more policy violations occurred within 120 days**. If an investigation reasonably needs to extend beyond 120 days (e.g., unusually complex allegations or an unusually high number of witnesses), the investigator will seek approval in writing from the appropriate Assistant Director of OCAP for a **reasonable time extension, up to an additional 120 days**. If more 120-day extensions are needed, the Director of OCAP must approve those extensions. If any extensions are granted, the

investigator will send a **written notification of the extension** to the reporting party, the respondent, the respondent's unit supervisor, and the Provost (for faculty) or the Senior Vice President of Human Resources (for staff). The investigator will make every attempt to complete a thorough investigation as expeditiously as possible within the additional period.

- f. If the respondent is a person who performs clinical services at Keck Medicine or another USC-affiliated medical enterprise, **notice will also be given to the appropriate medical staff at the respondent's medical units**. If any of the covered medical enterprises do not currently have an information sharing agreement to cover this type of notification, the Committee recommends that such agreements be developed as soon as possible.
- g. When the fact-finding phase of the investigation is completed, investigators shall **promptly prepare a report of investigation**. For an average case, this report should normally be submitted to the investigator's supervisor within 30 days, recognizing that some complex cases will take longer.
- h. After the report of investigation is completed, OCAP will prepare a letter setting forth the factual findings and any determination that a USC policy was violated. The reporting party and respondent should be **notified in writing of these findings within 5 business days** after the report is approved.
- i. Upon receipt of the notice of policy findings (in the "Findings Letter"), **the respondent has 10 business days to submit in writing to the OCAP investigator any evidence** (e.g., new documentary evidence or identify witnesses who can provide such evidence) **that contradicts the accuracy of the facts set forth in the letter**. The OCAP investigator will respond to both the reporting party and respondent within 5 business days acknowledging receipt of the supplementary evidence and whether it merits reopening the investigation or whether the investigation will remain closed. The respondent's reply and any supporting evidence will be attached as an addendum to the ROI.

Review Panels and Sanctioning

- j. Whenever there is a finding of policy violation(s), OCAP will wait 5 business days from dissemination of the notice of policy findings (see 3.g above), and no longer than 10 business days, before forwarding the Report of Investigation to the appropriate sanctioning panel or office. The exception to this would be if additional time is needed to investigate based on any new evidence that may have been submitted by the respondent concerning the factual findings (see 3.h. above).
- k. Recognizing that OCAP does not handle sanctions or appeals, the Committee recommends that all parties should be given a fair and reasonable opportunity to appeal any findings made by an OCAP investigation.

4. Respondents should be allowed to consult with an advisor and have the advisor present during interviews

Current Practice:

During OCAP investigations, reporting parties and respondents have the right to consult with an “advisor,” who is someone whose advice they trust about their OCAP case. An advisor may not be a witness or have any conflicting role in the process or with a party. The role of the advisor is to provide support and assistance in understanding and navigating the investigation process. However, advisors do not function as an advocate or attorney. Currently, advisors are not allowed in the room when the respondent, witness, or reporting party is being interviewed by an OCAP investigator. The person being interviewed may consult with the advisor before the interview, and advisors are allowed outside the interview room. The person being interviewed can request to leave the room to consult with their advisor. Respondents are allowed to take notes during the interview and when reviewing the investigative report once the investigation is completed.

Recommendations:

The Committee recommends changing OCAP’s procedures to allow an advisor to be in the room during all interviews. The advisor would not be allowed to participate in the interview, but having the advisor present will hopefully provide an objective observer during very stressful and potentially consequential discussions. Doing this would make OCAP’s procedures consistent with those of other investigative officers. For example, advisors are currently allowed to be present during interviews conducted as part of investigations conducted by the Office of Equity and Diversity, which investigates allegations involving protected classes. The Committee believes that this has had a positive impact on the USC community’s confidence in such interviews. This policy is driven by federal law (in some circumstances), but the Committee believes it should be extended to all investigative offices, including OCAP.

While the Committee recognizes this procedure could prolong some investigations, the benefits of such a policy outweigh any delay. Those benefits include: (1) having an additional objective witness who can help ensure the accuracy in the final summary of the discussion; (2) providing the person being interviewed with emotional support during a stressful experience; and (3) giving the community more confidence that the investigative process is reasonable and fair because an objective witness is allowed to be present.

Because protecting the privacy of the people involved in the investigation is an important component to these investigations, advisors would be required to agree to all relevant privacy/nondisclosure requirements.

The Committee recommends that the university set up a standing panel of advisors who have experience in university affairs and who are willing to make themselves available to serve as advisors. The members of this panel should receive training regarding the OCAP process and their role in that process. Members of this panel could be members of the Senate’s Faculty Rights and Responsibilities Committee, members of the Staff Assembly’s Rights and Responsibilities Committee, Gould faculty or

students, or attorneys retained by the interviewee. The interviewee should also be allowed to choose their own non-panel advisor if they want to do so.

5. Respondents should have increased access to Reports of Investigation and more detailed Findings Letters

Current Practice:

At the conclusion of a formal investigation, the OCAP investigator writes both a letter setting forth the factual findings of the investigations (“Findings Letter”) and a summary report known as the Report of the Investigation (ROI). Currently, the Findings Letters are sent to both parties. In addition, after the investigation has concluded, both parties have the right to appeal OCAP’s findings and/or the sanctions that were imposed.⁵ To help the parties decide whether to file an appeal, both parties can review the ROI in OCAP’s offices but may not take the report with them or make a copy.

It should be noted that if the respondent is a faculty member, that person can also later file a grievance⁶ related to the investigation or the sanctions. If a grievance is filed, the Faculty Handbook states that grievants (or their attorney) can ask to review the evidence in their case so that they can prepare for their grievance hearing. This request must be made to the chair of the Faculty Tenure and Privileges Appeals Committee, who then must seek the Provost’s approval. In response to these requests, grievants may be given redacted copies of the ROI. These requests are becoming more common, and the Provost has approved some of them.

Recommendations:

The Committee recommends the adoption of the process described below to provide respondents with more access to detailed information about the evidence in their cases:

- a. OCAP should create and provide the respondent with a longer, more robust **Findings Letter**, which includes a reasonably detailed summary of the evidence supporting the factual findings. These letters should be similar to the ones used in cases handled by the Office of Equity and Diversity (OED).
- b. Respondents should be given a **reasonable opportunity to review the ROI**, which may mean they need to view the report on more than one occasion, especially if the ROI is long or complex. The parties should be given access to review the ROI **on the “One Hub”**

⁵ Staff have the right to appeal findings that there was either sufficient or insufficient evidence of a violation. Faculty can only appeal a finding of sufficient evidence. Both faculty and staff have the right to appeal any sanctions that were imposed.

⁶ According to Chapter 7-A of the 2019 Faculty Handbook, a grievance is a complaint that is filed, alleging that the university has violated either the grievant’s legal rights or a right “established University policies, including those contained in the Faculty Handbook.” Grievances commonly allege that the grievant’s case was not handled as required by the university’s own rules and procedures.

electronic system, which provides people online access to documents after they sign a nondisclosure agreement restricting the dissemination, reproduction, or use of the documents that are accessed.

- c. If the party who reviews the ROI on One Hub violates the **nondisclosure agreement**, it should be handled as a violation of university policy that will subject them to additional sanctions. If a violation of the agreement results in retaliation against any witnesses or other parties, it will be treated as a serious, separate policy violation.
- d. The parties should be able to request access to One Hub for their advisor. The advisors should also be required to sign the nondisclosure agreement concerning use of the report, and the respondent is responsible for ensuring the advisor's compliance.

6. OCAP should produce and publicly release an annual report of anonymized investigative data

Current Practice:

OCAP does not currently publicly release any statistical information about its cases.

Recommendations:

In service of greater transparency and to instill greater confidence in the investigative process, the Committee recommends that OCAP prepare and publicly release an annual, anonymized report of statistical investigation data for the previous academic year. The purpose of this report would be to help USC faculty and staff understand the type of underlying allegations referred to OCAP, the investigative outcomes and sanctioning, and any noteworthy workplace misconduct trends. The Committee recommends that this annual report should be completed no later than August 1st of each year and provided to the Provost, Senior Vice President of HR, as well as the Academic Senate and Staff Assembly. If any of these reviewing bodies feels the need for more details or has concerns, additional information can be requested.

The following are examples of the data that this annual report should include:

- Number of formal workplace investigations undertaken for both staff and faculty.
- Median amount of time the investigations took to complete.
- Outcomes of formal workplace investigations to include those with policy findings and no policy findings for both staff and faculty.
- Number of allegations reviewed by OCAP that were ultimately referred to another office for resolution or resolved by OCAP absent a formal workplace investigation.
- Number of formal workplace investigations that are still pending outcome or sanctioning at the conclusion of the academic year.
- Summary of the spectrum of sanctions rendered by both the faculty Committee on Professional Responsibility and staff Central HR. Further, the number of formal workplace investigations for both staff and faculty that fell into the various sanctioning categories.

- Highlight of any noteworthy workplace misconduct trends and any consistent, anecdotal root causes.
- Number of cases that involved any retaliation (i.e. any adverse action taken against anyone involved in an investigation. Retaliation includes but is not limited to hostile behavior or statements, schedule changes, reassignments, blocked promotions, and demotions.)

7. OCAP Investigators should instruct all parties and witnesses to keep the information about the investigation private (i.e. disclosing it only to those with a need to know), and any violation of that instruction that leads to retaliation of any kind should subject to sanctions

Current Practice:

Currently OCAP investigators ask all parties and witnesses to keep the information about investigations private, unless there is a need to disclose the information to someone who has a need-to-know in order to perform their job duties.

Recommendations:

The Committee recommends that OCAP continue to **instruct all parties and witnesses not to reveal information about the investigation except to those who have a need to know, including their advisors, attorneys, or immediate family members.** If a USC employee violates that instruction and discloses information about the investigation to people who do not have a legitimate need to know the information (e.g. telling other non-involved USC employees about the investigation or people involved in the investigation), and as a result any form of retaliation occurs, it will constitute a violation of university policy and the person should be subject to additional sanctions.

If a party or witness believes that there is a legitimate need to disclose information about the investigation to someone other than their advisors, attorneys, or immediate family, they should consult with their respective Rights and Responsibilities Committee (either for staff or faculty) to seek advice about the appropriateness of the disclosure.

The Committee wishes to reiterate that **all parties and witnesses must be vigorously protected from retaliation**, and this must be made explicit and clear in the applicable USC policies. Additionally no undue influence or intimidation of witnesses will be tolerated.

8. OCAP investigators should have diverse backgrounds, be hired by committees, and receive training to ensure that they understand their role at the university and the nature of our academic culture

Current Practice:

OCAP's current hiring, onboarding and training for its investigators includes the following:

- a. **Hiring Profile:** Bachelor's degree Minimum Experience: 7 years Minimum Field of Expertise: Directly related experience in conduct investigations and management in an

educational institution or large organization. Thorough knowledge of state and federal laws, regulations, and policies, including Title IX and Title VII. Knowledge of complaint procedures compliant with fair process ideals. Demonstrated analytical and/or problem-solving capabilities. Ability to conduct interviews and investigations. Ability to present ideas clearly and effectively, both orally and in writing. Previous hiring managers have looked for individuals who demonstrated maturity, high emotional intelligence, and had experiences/backgrounds that lent weight/gravitas. These less tangible qualities are likely the most critical as they allow an investigator to sit with a facilities worker in the morning and the Athletic Director or star surgeon in the afternoon.

- b. **Onboarding & training:** Investigators receive extensive training on USC policy, process, and culture in house. They shadow investigators in OCAP, Title IX, and OED for approximately one month and work cases jointly until they demonstrate competency in the above. They also attend annual training, typically through the Association of Workplace Investigators, which is currently the main workplace investigations association. Some have undertaken additional study to familiarize themselves with specific units at USC (for example, two watched a full day of surgery to understand the flow of a hospital operating room).
- c. **Current makeup:** There are now six investigators, whose expertise draws heavily on prior legal experience (several have been either public defenders or legal advocates) or previous service in law enforcement. Almost all have more than ten years of previous experience in investigations. One is bilingual. Most have experience in higher education either through service or teaching, and advanced degrees.

Recommendations:

The Committee recommends that all future hiring and training of OCAP investigators should be done consistent with the following principles:

- a. **Hiring: Investigators should have diverse backgrounds, and training and experience doing investigations, preferably with some experience in an academic setting.** It is recommended that USC hire investigators whose diverse experience and cultural backgrounds will inspire trust and confidence in the community. OCAP investigations are administrative, and they should not feel like criminal investigations. To achieve that, it is recommended that future hiring should focus on:
 - (i) Hiring investigators so that the diversity of the team's ethnic backgrounds reflects that of the employee population at USC;
 - (ii) Preference should be given to candidates with a diversity of professional experience that includes higher education and large non-profit institutions, with demonstrated understanding of university culture;
 - (iii) Hiring should emphasize candidates who are open-minded, sensitive, and good at putting interviewees at ease;
 - (iv) Hiring of investigators should be done by a committee that includes representatives from the Committee of Professional Responsibility (COPR), a

staff equivalent of COPR, the Academic Senate, the Staff Assembly, HR representatives, and Faculty Affairs representatives.

- b. **Communication: There should be more transparency and communication with the community about the OCAP investigators' backgrounds and training.** During our review, some OCAP investigators shared the sense that their roles on campus, as well as their backgrounds and approaches, are not generally understood. To familiarize our community with OCAP and its investigators, we recommend (i) OCAP procedures be discussed in the biannual sexual harassment training module; and (ii) the names and photographs of investigators, along with a personal statement that describes their background and approach, should be available on the USC website. In addition, we recommend some sort of video introduction or town hall take place, during which some or all the investigators might introduce themselves to the wider community and describe their work.
- c. **Training:** OCAP investigators should receive **enhanced onboard training** to familiarize them with university administration, reporting structures, and culture. This needs to extend beyond shadowing other OCAP or Title IX investigators, to include training concerning the nature of certain key academic roles (i.e. deans, chairs, and other faculty), and the centrality of academic freedom and integrity to university life. All investigators should familiarize themselves with the USC system, including distinctions in culture and operation between USC's academic units, schools, medical centers, and central administration.

Investigators should be required to take **annual training** emphasizing best practices in workplace investigations. These may include training in implicit bias and bystander behavior, sensitivity to cultural differences, disabilities, mental health issues, and how they present, and de-escalation techniques.

9. All Respondents should be given a reasonable and fair opportunity to appeal both the misconduct findings and any sanction that might be imposed

Current Practice: The appeal process for faculty is outlined in the Faculty Handbook, Section 6-F. The appeal process for staff tracks the appeal process for the Office of Equity and Diversity. Findings of fact and policy violations can be appealed to the Executive Director of OED and OCAP, or their designee, after an investigation concludes and prior to sanctioning. Sanctions can be appealed to the Senior Vice President of Human Resources after the sanctioning process.

Recommendation:

All university employees-- whether they are faculty, staff, reporting party or respondent--should be given the same right to appeal any and all OCAP findings. More specifically, the Committee recommends

that staff and faculty have similar appeals processes to ensure that all employees have equal rights, particularly for investigations in which both staff and faculty are involved.

IV. ANCILLARY ISSUES

The Committee recommends that the university conduct a thorough examination of certain issues that are beyond the charge of this committee, but which overlap in certain ways with our recommendations. The Committee believes that these issues must be addressed to ensure that faculty and staff are given the same rights, and to close certain disparities that now exist between the handling of staff and faculty cases.

1. The university should consider creating a campus-wide Staff Handbook, with policies that mirror the Faculty handbook.
2. The university should consider creating a staff grievance process that mirrors the faculty grievance process (Section 9 of the Faculty Handbook).
3. The university should consider creating a committee that would determine the appropriate sanctions for staff, similar to the faculty's Committee on Professional Responsibility.
4. The university should consider reforming the Staff Complaint Process (<https://policy.usc.edu/staff-complaint-procedures/>) to mirror the complaint process used for faculty.
5. The university should consider drafting and publicizing a "whistleblower" policy that would encourage faculty and staff to report wrongdoing without fear of retaliation.
6. The university should consider strengthening and better publicizing its non-retaliation policies, including more specifically defining the sanctions for retaliation when it does occur.

ATTACHMENTS

Exhibit A

Note: Key terms are marked with an * and defined below.

1. What is OCAP and what kind of conduct does it investigate?

The Office of Conduct, Accountability, and Professionalism (OCAP) investigates alleged violations of university policy that involve misconduct that is persistent, pervasive or inherently serious and does not fall within the jurisdiction of one of USC's other investigative offices (e.g., misconduct involving protected classes that would be investigated by the Office of Equity and Diversity).

For example, OCAP investigates alleged misconduct that:

- (1) Has occurred before and has not been amenable to correction;
- (2) Involves multiple interactions and/or affected parties;
- (3) Involves violence or the threat of violence;
- (4) Involves the abuse of power or retaliation; or
- (5) Requires fact-finding beyond the capacity of a Human Resources or Faculty Affairs investigation.

OCAP resides in Human Resources. It was created to help ensure that all members of the USC community could report allegations not previously or adequately covered by other existing offices.

2. Are USC employees required to participate in an OCAP investigation?

The short answer is yes—USC staff and faculty have a duty to cooperate with all University investigations. Although USC recognizes that participating in an investigation can be quite stressful and difficult, USC has a duty to conduct fair, thorough investigations. This requires the participation of all employees who may have relevant information. An employee's failure to cooperate with an investigation may result in disciplinary action.

3. Who will know what the witnesses and parties stated?

OCAP will keep information gathered during an investigation *private** to the extent possible. However, statements made by *witnesses** or the *reporting party** cannot be kept completely *confidential** because the *respondent** must be given a fair opportunity to respond to the allegations. Copies of interview reports are not disclosed during the course of the investigation. However, if a *party** appeals the findings, they are allowed to review the investigative report, which includes what witnesses stated.

4. Are parties and witnesses protected from retaliation?

USC policy prohibits *retaliation*.^{*} At every stage in the investigation, the parties and witnesses are informed that retaliation is strictly prohibited and will be sanctioned as a separate offense. If an individual believes that they are being retaliated against because of their participation in an investigation, they should immediately contact the OCAP office.

5. How long will an OCAP investigation usually take?

OCAP investigates all complaints as quickly and thoroughly as possible. The timeline varies depending on the timeframe of the alleged misconduct, whether the *reporting party*^{*} is anonymous, the number of witnesses and parties identified, the amount of documentary evidence, and the complexity of reported issues.

6. What will happen during an OCAP interview?

During an interview, the OCAP investigator will ask questions related to the issues, listen to the interviewee's responses, take notes and confirm they have accurately recorded the responses, ask for the names of anyone else who may have information about the allegations, provide the interviewee with the opportunity to present any and all information and materials relevant to the allegations, and ask the interviewee to keep the information shared private to protect the integrity of the process and the rights of everyone involved.

7. When will the responding party know that an OCAP investigation has been initiated?

As soon as the OCAP investigator has determined the scope of the investigation (by interviewing the reporting party and the witnesses), OCAP notifies the respondent, in writing, of the investigation, the alleged misconduct, and the involved policies.

8. Besides the parties, who else is told that an OCAP investigation is happening?

Notification about the existence of an OCAP investigation occurs only on a need-to-know basis. Generally, the dean or head of the involved school or business unit will be notified when an investigation has been opened, when that investigation has been concluded, and if there were any findings that misconduct occurred. If the investigation resulted in findings that misconduct occurred, for faculty, those findings are referred to a faculty committee to recommend the appropriate sanction, and then to the Provost or the Provost's designee. The findings concerning staff are referred to the central Human Resources unit to determine if a sanction is merited, and if so, what the sanction should be.

9. Are the parties allowed to consult with an advisor^{*} about an OCAP investigation, and can that advisor be in the room during an OCAP interview?

All parties may consult an advisor prior to their OCAP interview, but advisors are not currently allowed in the interview room. During the interview, the person being interviewed may leave the interview room at any time to consult with the advisor.

10. Will the parties and witnesses be informed of the results of the investigation?

At the end of an investigation, the OCAP investigator will make findings of fact and determine if the respondent violated university policy. OCAP will notify the parties in writing of those findings and whether a policy violation occurred. That notice will also describe the next steps, including the potential sanctioning process. Witnesses will be informed that the investigation has concluded.

11. Who decides what sanction should be imposed?

OCAP does not determine sanctions or corrective actions. When a faculty member has been found to have violated a university policy, sanctions are determined by a panel of faculty, as outlined in [section 6-AA \(3\) of the Faculty Handbook](#). For staff, if OCAP concludes the respondent violated university policy, the Senior Vice President for Human Resources (or their designee) determines the appropriate sanction or corrective action.

12. Can a party appeal an OCAP finding and, if so, how?

OCAP does not handle appeals by faculty. The appeal process for faculty is set forth in [Chapter 6 of the Faculty Handbook](#). For staff, either party may file an appeal by submitting it to ocap@usc.edu within (7) calendar days of when they receive written notice of the findings of the investigation. More detailed information about the appeals process is provided to the parties with the written notice of findings.

13. Where can people go for help figuring out what is going to happen during an OCAP investigation?

- Counseling and support services; Center for Work and Family Life (CWFL) at <https://employees.usc.edu/work-family-life/>.
- Resource and navigation assistance: USC's Office of Ombuds at upcombuds@usc.edu or hscombuds@usc.edu.
- Additional resources are available to faculty through the Academic Senate's Committee on Faculty Rights and Responsibilities at <https://academicsenate.usc.edu/committees/faculty-rights/>.

Glossary of Terms

Advisor: Reporting parties and respondents have the right to consult with someone whose advice they trust about their OCAP case. An advisor may not be a witness or have any conflicting role in the process or with a party. The role of the advisor is to provide support and assistance in understanding and navigating the investigation process. However, advisors do not function as an advocate or attorney.

Confidentiality: Information is kept confidential if it is not shared with anyone else.

Party: the reporting party or respondent (as defined below)

Privacy: Information is kept private if it is not publicly disclosed and is shared only with others who have a need to know it.

Reporting party: any person(s) who has allegedly been directly affected, impacted, or harmed by the alleged misconduct. The reporting party may not be the person who originally contacted OCAP to report the conduct in question.

Respondent: the person who allegedly committed the involved misconduct.

Retaliation: an adverse action taken against anyone involved in an investigation. Retaliation includes but is not limited to hostile behavior or statements, schedule changes, reassignments, blocked promotions, and demotions.